

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
LEWIS COUNTY,

Appellant,

**V.**

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCRB No. 81-7

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of an Order of Violation relating to an outdoor fire, came on for hearing before the Pollution Control Hearings Board, David Akana and Gayle Rothrock, Members, convened at Chehalis, Washington, on May 13, 1981. William A. Harrison, Administrative Law Judge, presided. The respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by Eugene Butler, Chief Civil Deputy Prosecuting Attorney. Respondent appeared by its attorney, James D. Ladley. Reporter Carolyn Koinzan recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From  
2 testimony heard and exhibits examined, the Pollution Control Hearings  
3 Board makes these

#### 4 FINDINGS OF FACT

##### 5 I

6 Respondent, pursuant to 43.21B.260 has filed with this Board a  
7 certified copy of its General Regulations for Air Pollution Sources  
8 and amendments thereto of which official notice is taken.

##### 9 II

10 Appellant, Lewis County, operates a landfill at Alpha Road which  
11 has, until recently, been used as a primary disposal site for old  
12 tires. It is undisputed that vandals set fire to a large pile of  
13 tires stored there on the night of October 31, 1980 (Halloween). The  
14 fire was discovered by the County Sheriff's Department which informed  
15 the County's manager of the site, Mr. Homer Waltrip. Appellant never  
16 intended to cause an open fire of the tires and understandably did not  
17 possess a permit for what it did not intend to do.

##### 18 III

19 Mr. Waltrip went to the site arriving at 11:20 p.m. that same  
20 evening. He observed an intense fire involving many tires, and deemed  
21 the fire to be beyond what local fire authorities could extinguish.  
22 Although Mr. Waltrip remained at the site until 3:00 a.m. and although  
23 fire authorities knew of the fire, all agreed it would be futile to  
24 attempt to extinguish the fire.

##### 25 IV

26 The fire continued to burn unhampered through the next two days,

27 FINAL FINDINGS OF FACT,  
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1 Saturday and Sunday, November 1 and 2, 1980. Mr. Waltrip checked the  
2 progress of the fire periodically during that weekend. On Monday,  
3 November 3, respondent Southwest Air Pollution Control Agency (SWAPCA)  
4 received a complaint from a nearby resident regarding the smoke.  
5 SWAPCA's inspector went to the site and observed the burning remains  
6 of some 10,000 tires. The single pile of these burning tires covered  
7 an area some 30 yards wide and 200 yards long. The inspector went  
8 directly to the office of Mr. Waltrip where the fire was discussed.  
9 The inspector directed Mr. Waltrip to extinguish the fire. Mr.  
10 Waltrip agreed to attempt to extinguish the fire.

11 V

12 On both that day, Monday, November 3, and Tuesday, November 4,  
13 Mr. Waltrip visited the site. On Wednesday, November 5, he deemed the  
14 fire finally to be amenable to control. The equipment available to  
15 fight the fire consisted of two 2,000-gallon tank trucks. A front end  
16 loader was also used to turn the fire contents so as to allow water  
17 inside the pile. The fire was quenched repeatedly until finally  
18 extinguished on Thursday, November 13--nearly two weeks after it  
19 began. Very large quantities of black smoke were emitted during that  
20 time. Residences are located within 100 yards downwind of the site.

21 VI

22 In extinguishing the fire in question, water merely applied to the  
23 surface of the burning site would have little effect except to further  
24 increase visible emissions. Not until the time chosen by Mr. Waltrip  
25 was it practical to approach and work the fire with a loader to turn  
26 the contents so as to make the application of water effective.

1 Further, the equipment available to Lewis County to fight the fire was  
2 adequate only to quench the fire slowly.<sup>1</sup>

3 VII

4 This is the second fire started by vandals at this landfill and  
5 tire disposal site. The prior fire was exactly two years previous on  
6 Halloween night. That fire consumed about 1,000 tires and was  
7 quenched over a period of five days by two tank trucks.

8 VIII

9 Since the second fire, Lewis County has refused to accept any more  
10 tires at the Alpha Road landfill site, is investigating alternate  
11 means of disposal, and has engaged Fire District No. 6 to provide fire  
12 protection to the site now.

13 IX

14 In summary, it was impractical for Lewis County to attempt to  
15 extinguish the fire before it did. However, this is the second time  
16 in two years that extensive air pollution has resulted when vandals  
17 were able to ignite a tire fire on this site which Lewis County has no  
18 ready, practical means to extinguish.

- 19
- 
- 20 1. A fire of some 1,000 tires at a store in Chehalis required the  
21 application of 750,000-850,000 gallons to extinguish it in one  
22 day. By contrast this fire was ten times that large and the  
23 reservoir and hydrants which were available to fight the Chehalis  
24 fire were 20 minutes' distant from this site with only the 2,000  
25 gallon tank trucks available to carry the water. No other fire  
26 fighting equipment was shown to be available at this site in this  
27 hearing.

1 X

2 Lewis County received an Order of Violation from SWAPCA on  
3 November 12, 1981. This required action to prevent a recurrence and  
4 also imposed civil penalties totaling \$750. Specifically, violation  
5 was alleged of RCW 70.94.775 and SWAPCA Section 400-035 prohibiting  
6 outdoor fires containing rubber products and SWAPCA Section 400-035  
7 requiring all illegal fires to be extinguished upon notice. From this  
8 Order of Violation appellant appeals.

9 XI

10 Any Conclusion of Law which should be deemed a Finding of Fact is  
11 hereby adopted as such.

12 From these Findings the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 RCW 70.94.775 and SWAPCA Section 400-035(2)(b)(v) prohibit open  
16 outdoor burning of tires. The latter provides, in pertinent part:

17 No person shall ignite, cause to be ignited, permit to  
18 be ignited, or suffer, allow or maintain any open fire  
19 within the jurisdiction of the Authority, except as  
provided in this Regulation. (Emphasis added.)

20 ....

21 (2) Open burning may be done under permit:

22 (b) No permit shall be issued unless the control  
23 officer is satisfied that:

24 ....

25 (v) No material containing asphalt,  
petroleum products, paints, rubber products  
plastic...will be burned (emphasis added)

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

II

In interpreting regulations such as SWAPCA Section 400-035(2)(b)(v), above, we have long held that one may "allow" a fire by failing to take reasonably prudent precautions to put the fire out. Thus, we have upheld violations where there was no attempt to put a fire out. A-1 Auto Wrecking v. PSAPCA, PCHB No.337 (1973) Merlino v. PSAPCA, PCHB No. 924 (1976) and Town of Cathlamet v. SWAPCA, PCHB Nos. 78-249 and 78-265 (1979). We have upheld a violation where there was an apathetic attempt to put a fire out. J. J. Welcome & Sons v. PSAPCA, PCHB No. 70-42 (1971) Northwest Pipe and Steel v. PSAPCA, PCHB No. 468 (1974). None of these cases presented the exact situation now before us. Lewis County did attempt to extinguish the fire, but was barred by impracticality from doing so immediately. Thus, extensive air pollution occurred. However, the impracticality which prevented immediate extinguishment was brought on by Lewis County itself. This is so because:

1. On Halloween night only two years previous, a similar fire was ignited by vandals and allowed to burn for five days. This put Lewis County on notice that the tires were so arranged that prompt extinguishment of a fire would be beyond the fire fighting capability available.

2. Notwithstanding this, tires were allowed to accumulate in such a large pile that an even larger fire resulted than before. Lewis County did not use good management practice in allowing a large pile of tires to accumulate, rather than some numbers of small and separate piles. A fire arising in such small and separate piles

1 would probably have been within the fire fighting capability available.

2 We conclude that Lewis County did not use reasonably prudent  
3 precautions to prevent the fire and, thus, jeopardized a reasonable  
4 attempt of extinguishment. Lewis County therefore violated SWAPCA  
5 Section 400-035(2)(b)(v) by allowing a fire of tires, a prohibited  
6 material.

7 III

8 SWAPCA Section 400-035(3) requires open fires such as this one to  
9 be extinguished by the responsible person upon notice of the Control  
10 Officer or his duly designated agent. We conclude 1) that Lewis  
11 County was the responsible person for purposes of this regulation, 2)  
12 that a duly designated agent of SWAPCA notified Lewis County of the  
13 fire requesting that it be extinguished, 3) that Lewis County did use  
14 reasonably prudent steps to extinguish the fire which meets the intent  
15 of Section 400-035(3). Lewis County did not violate Section  
16 400-035(3).

17 IV

18 RCW 70.94.221 authorizes the regulatory portion of SWAPCA's order  
19 calling for corrective action. The corrective action ordered should  
20 be affirmed.

21 RCW 70.94.431 authorizes a civil penalty of \$250 per day for each  
22 violation, and in the case of a continuing violation, each day's  
23 continuance is a separate and distinct violation. The three days,  
24 November 3, 4, and 5, 1980, on which the fire of prohibited materials  
25 burned could justify a maximum penalty of \$750. This was the penalty  
26 assessed.

27 FINAL FINDINGS OF FACT,  
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V

Because Lewis County has refused to accept any more tires at the site in question and seeks an alternate means for tire disposal (see Findings of Fact VIII), and because Lewis County has now contracted for landfill site fire protection from F.D. #6, the penalty should be mitigated by suspension.

VI

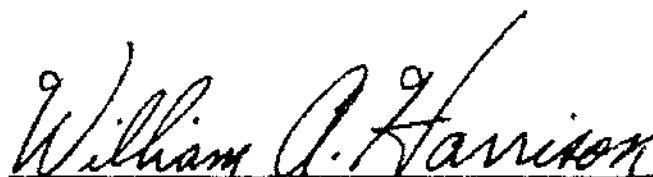
Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.



ORDER

The Order of Violation is affirmed, provided that the \$750 civil penalty assessed is suspended on condition that appellant not violate respondent's Regulation through outdoor burning of tires for a period of two years from appellant's receipt of this Order.

DONE at Lacey, Washington, this 17<sup>th</sup> day of August, 1981.

  
WILLIAM A. HARRISON  
Administrative Law Judge

CONCUR:

POLLUTION CONTROL HEARINGS BOARD

  
DAVID AKANA, Member

  
GAYLE ROTHROCK, Member

FINAL FINDINGS OF FACT,  
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